

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015020584

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015020693

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT.

ORDER FOLLOWING PREHEARING
CONFERENCE, GRANTING MOTION
TO RESET PROCEDURAL TIMELINES,
AND GRANTING CONSOLIDATION

On March 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Advocate Joanne Louise appeared on behalf of Parent and Student.¹ Parent also appeared. Anne Sherlock, Attorney at Law, appeared on behalf of Twin Rivers Unified School District. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Motion to Reset Hearing Dates.

On March 18, 2015, Twin Rivers filed a Request to Reset Hearing Dates as to OAH case number 2015020584, because Student did not serve it with a copy of the complaint. Twin Rivers' request was supported by a declaration under penalty of perjury from its Director of Special Education. During the PHC the parties were heard as to Twin Rivers' request.

The Individuals with Disabilities Education Act of 2004 (20 U.S.C. § 1400, et. seq.) provides that a party may not have a due process hearing until the notice of a due process

¹ Ms. Louise was instructed to file a notice of representation with OAH with her address and fax number.

hearing request meets the specifications listed in Section 1415(b)(7)(A). (20 U.S.C. § 1415(b)(7)(B).) Further, Section 1415(c)(2)(A) requires the party requesting the due process hearing serve a copy of the complaint on the opposing party.

Title 34 Code of Federal Regulations part 300.515(a)(1) (2006), and Education Code sections 56502, subdivision (f), and 56505, subdivision (f), require that the hearing be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. Speedy resolution of the due process hearing is mandated by law and continuance of due process hearings may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

Student contends she provided Twin Rivers with a copy of the complaint on or about February 2, 2015, by mail and electronic correspondence. Student did not file with OAH a proof of service establishing that her complaint in OAH case number 2015020584 was provided to Twin Rivers at the time it was filed with OAH. The attached proof of service was left blank with the following handwritten notation, “fax to party?” Twin Rivers established that it did not receive a copy of Student’s complaint until March 3, 2015, when OAH provided it with a courtesy copy. Twin Rivers’ motion to reset the procedural timelines was granted. The procedural timelines will be reset as of March 3, 2015. All previously scheduled dates are vacated, and OAH will issue a new scheduling order with dates for mediation, prehearing conference and hearing.

2. Motion to Consolidate.

On February 2, 2015, Student filed a request for due process in OAH case number 2015020584 naming Twin Rivers (First Case).² On February 9, 2015, Student filed a second request for due process in OAH case number 2015020693 also naming Twin Rivers (Second Case).³ On March 18, 2015, Twin Rivers filed a Motion to Consolidate Student’s cases. During the PHC both parties were heard on this motion. Student supports consolidation.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

² OAH received Student’s first complaint on January 31, 2015, a Saturday. It is deemed filed as of the next business day. (1 Cal. Code Regs. § 1006, subd. (h).)

³ OAH received Student’s second complaint on February 7, 2015, a Saturday. It is deemed filed as of the next business day. (1 Cal. Code Regs. § 1006, subd. (h).)

In the First Case, Student alleges that she has special needs. In liberally construing Student's complaint and supporting attachments because Student was represented at the time by Mother, Student identifies as an issue for hearing, whether Twin Rivers denied her a free appropriate public education when it failed to find her eligible for special education⁴ as a child with an emotional disturbance, other health impairment, and/or visual impairment.⁵ Student further identifies as an issue for hearing whether the Twin Rivers staff improperly placed hands on her. In the Second Case, Student alleges Twin Rivers allowed its staff and others to improperly place hands on her in January 2015; allowed staff and others to call her names; and refused to allow Parent to sign her out of school when she was sick.

Here, the First Case and the Second Case present similar and overlapping issues of law and fact. Consolidation is warranted and will prevent the risk of inconsistent rulings. In addition, consolidation furthers the interests of judicial economy because both cases involve the same parties and many of the same witnesses would be required to testify in each proceeding. Each matter will also involve introduction of the same or similar documents. Accordingly, consolidation was granted.

The statutory 45-day timeline for issuance of the decision in the consolidated matter shall be based on the dates as reset in the First Case, OAH Case No. 2015020584. All dates previously set in OAH Case No. 2015020693, the Second Case, are vacated. The consolidated matter shall now be heard on the dates as reset for the First Case. OAH will issue a scheduling order identifying these dates which will be reset as of March 3, 2015.

2. Other Matters. All other matters relevant to preparing for hearing, including clarification of the issues and identification of witnesses and exhibits, will be addressed at the PHC for the consolidated matter. OAH requires a party to file a PHC statement at least three business days prior to the PHC. Student has not filed a PHC statement and is ordered to do so in a timely matter.

3. Special Needs and Accommodations. At present no party has asked for any accommodation for a party or witness. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

⁴ Twin Rivers objected to eligibility being identified as an issue for hearing. Its objection is noted for the record.

⁵ Student clarified during the PHC that this issue reaches back to June 2014. Student alleges in her complaint that she has mood disorder, Tourette's syndrome, asthma, and vision impairment.

4. Filings with OAH. **The parties were reminded that every filing with OAH must be accompanied by a proof of service establishing when and by what manner the other party was provided with a copy of the document filed with OAH.** Student was admonished to refrain from filing letters updating OAH on circumstances in Student's life. The only documents Student should file with OAH are mandatory pleadings such as a PHC statement, or motions requesting relief. Other items including Student's numerous advisory letters are not considered by the ALJ.⁶

5. Settlement. The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. Dates for hearing will not be cancelled unless OAH receives a letter of withdrawal or request for dismissal from Student with the signature page of the signed agreement, or unless otherwise ordered.

IT IS SO ORDERED.

DATE: March 23, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

⁶ Student was advised that she may include such letters in her evidence binder if she believes they are relevant to the issues for hearing.